



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2022-0001]

Proposed 2022 Renewal of Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of California, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of proposed renewal of MOU, request for comments.

SUMMARY: The FHWA and the State of California, acting by and through its Department of Transportation (Caltrans), propose renewing the MOU authorizing Caltrans' participation in the Categorical Exclusion Assignment program. This program allows FHWA to assign its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed MOU, are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA-2022-0001, by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the means below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

Federal eRulemaking Portal: Go to Web site: <http://www.regulations.gov/>. Follow the instructions for submitting comments on the DOT electronic docket site.

Facsimile (Fax): 1-202-493-2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed 2022 renewal MOU, or to read background documents or comments received, go to

<http://www.regulations.gov/> at any time, or to 1200 New Jersey Avenue, SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to

http://www.regulations.gov, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For FHWA: Shawn Oliver; by email at Shawn.Oliver@dot.gov or by telephone at 916-498-5048. The California Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Pacific Time), Monday through Friday, except Federal holidays. For the State of California: Chris Benz-Blumberg: by email at Chris.Benz-Blumberg@dot.ca.gov or by telephone at 916-956-8660. The Caltrans' business hours are the same as above although State holidays may not completely coincide with Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may reach the Office of the Federal Register's home page at:

<http://www.archives.gov/> and the Government Publishing Office's database at:

<http://www.govinfo.gov/>. An electronic version of the proposed 2022 renewal MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov>.

Background

Section 326 of Title 23 U.S. Code, creates a program that allows the Secretary of the U.S. Department of Transportation (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). In addition, this program allows the assignment of other environmental review requirements applicable to Federal highway projects. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FHWA renewed California's participation in this program for a fourth time on April 18, 2019. The original MOU became effective on June 7, 2007, for an initial term of 3 years. The first renewal followed on June 7, 2010, the second renewal followed on June 7, 2013. The third renewal followed on May 31, 2016, and was amended on December 30, 2016. The fourth renewal has an expiration date of April 18, 2022.

Prior MOUs in this program had 3-year terms. Changes to 23 U.S.C. 326(c)(3) under the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Pub. L. 117-58), enacted on November 15, 2021, require that MOUs have a term of 5 years for a State that has assumed the responsibility for CEs under the program for 10 years or longer. Caltrans has participated in this program for 14 years. Therefore, this proposed renewal MOU will have a term of 5 years.

Statewide decision making responsibility would be assigned for all activities identified in the MOU within the categories listed in 23 CFR 771.117(c) and those listed

as examples in 23 CFR 771.111(d), and any activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) or example activities listed in 23 CFR 771.117(d) after the date of the execution of this MOU. In addition to the NEPA CE determination responsibilities, the MOU would assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Including determinations for project-level conformity if required for the project , except as specified in Stipulation II.B.2 of the MOU*
- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- Compliance with the noise regulations in 23 CFR part 772 (except approval of the State noise policy in accordance with 23 CFR 772.7)
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and 1536
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a-757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501-312508

- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR Part 774, *except as specified in Stipulation II.B.2 of the MOU*
- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209
- Clean Water Act, 33 U.S.C. 1251–1377, Sections 401, 404, and 319
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- Wetlands Mitigation, 23 U.S.C 103(b)(6)(m), 133(b)(3)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- Flood Disaster Protection Act, 42 U.S.C. 4001–4128
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
- Land and Water Conservation Fund (LWCF), Pub. L. 88-578, 78 Stat. 897 (known as Section 6(f))
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9671 – 9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR sections 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 11593, Protection and Enhancement of Cultural Resources
- E.O. 13007, Indian Sacred Sites
- E.O. 13122, Invasive Species
- Planning and Environment Linkages, 23 U.S.C. 168, except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135.

The MOU allows the State to act in the place of FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the above-listed laws and Executive Orders. The State may also assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation.

The FHWA will consider the comments submitted on the proposed fifth renewal MOU when making its decision on whether to execute this MOU. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Vincent Mammano,
Division Administrator,
Federal Highway Administration.

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